

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3, 81.4, and 691.3, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 95, “Disposition of Seized and Forfeited Weapons and Ammunition,” Chapter 150, “Division of Criminal Investigation Criminalistics Laboratory,” Chapter 156, “DNA Database,” and Chapter 157, “Devices and Methods to Test Body Fluids for Alcohol or Drugs,” Iowa Administrative Code.

The Division of Criminal Investigation Criminalistics Laboratory is created within the Department of Public Safety in Iowa Code section 691.1. The Commissioner of Public Safety is authorized to adopt administrative rules defining the capabilities of the Criminalistics Laboratory and governing the handling of items to be processed by the Criminalistics Laboratory in Iowa Code section 691.3. Several other provisions of the Code of Iowa require the adoption of administrative rules regarding responsibilities and operations of the Laboratory. Among these are Iowa Code chapter 81, which established a DNA Database within the Criminalistics Laboratory and requires the adoption of administrative rules for the collection, submission, analysis, identification, storage, and disposition of DNA records, and Iowa Code section 321J.2, which requires the adoption of standards for minimum detectable levels of controlled substances in the body fluids and tissues of samples analyzed by the Laboratory. The amendments proposed herein update and clarify rules applicable to the operations of the Criminalistics Laboratory.

Any interested person may submit comments regarding these proposed amendments by mail to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by fax to (515)725-6195; or by e-mail to admrule@dps.state.ia.us. Comments must be received by 4:30 p.m. on May 8, 2012, or may be submitted at the public hearing.

There will be a public hearing to hear comments from any interested member of the public regarding these proposed amendments at 9:30 a.m. on May 8, 2012, in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons who speak at the hearing are encouraged to submit their remarks in writing also but are not required to do so.

No fiscal impact is anticipated from these amendments.

Rules of the Department of Public Safety are subject to the provisions for waivers of administrative rules found in 661—10.222(17A).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 81, 691, 809, and 809A.

The following amendments are proposed.

ITEM 1. Amend rule 661—95.5(809,809A) as follows:

661—95.5(809,809A) Disposition of firearms (interstate). Any firearm in the possession of the division of criminal investigation criminalistics laboratory pursuant to Iowa Code section 809A.17 which is not entered into the firearms reference file pursuant to the provisions of rule 661—95.4(809,809A) and which the commissioner of public safety deems appropriate for distribution to other crime laboratories may be offered to them. ~~The transfer of a firearm shall be completed within one year of its evaluation.~~

ITEM 2. Amend subrule 150.3(8) as follows:

150.3(8) Photography. The photography section provides photographic and video processing services, both digital and film-based, required by all divisions of the department of public safety.

ITEM 3. Rescind subrule 150.4(2) and adopt the following **new** subrule in lieu thereof:

150.4(2) Evidence may be submitted to the laboratory via regular, certified, or registered mail or personal service. Any evidence to be submitted to the laboratory shall be entered electronically into the laboratory information management system prior to submission. Each entry shall include a description of each item to be submitted and an examination request for each item to be submitted.

NOTE: Access to the laboratory information management system is restricted to authorized users representing agencies authorized to submit evidence to the laboratory. Authorized users should contact the laboratory for instructions regarding access to the system.

ITEM 4. Strike “81GA,HF619” wherever it appears in rules **661—156.1(81GA,HF619)** to **661—156.8(81GA,HF619)** and **661—156.10(81GA,HF619)** and insert “81” in lieu thereof.

ITEM 5. Amend rule 661—156.6(81) as follows:

661—156.6(81) Analysis of DNA samples. Samples of DNA submitted to the laboratory shall be analyzed by laboratory personnel and the results of the analysis entered into the database in accordance with the provisions of “Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories,” published by the DNA Advisory Board to the Federal Bureau of Investigation, ~~April 1999~~ September 1, 2011.

EXCEPTION: Analysis of DNA samples may be conducted by other laboratories under contract with the department, with the approval of the administrator. Any other laboratory conducting analysis of DNA samples for inclusion in the database shall comply with the requirements and procedures to which the division of criminal investigation criminalistics laboratory is subject under this rule.

ITEM 6. Rescind and reserve rule **661—156.9(81GA,HF619)**.

ITEM 7. Amend paragraph **156.10(2)“a”** as follows:

a. The ~~division~~ laboratory, upon receipt of a written request that validates reversal on appeal of a person’s conviction, adjudication, or commitment, and subsequent dismissal of the case, or upon receipt of a written request by a person who voluntarily submitted a DNA sample pursuant to ~~2005 Iowa Acts, House File 619, section 3~~ Iowa Code section 81.3, subsection 3, paragraph “b,” shall expunge all of the DNA records and identifiable information of the person in the database. The person or the person’s representative shall be notified upon completion of such action.

ITEM 8. Amend subrule 157.2(3) as follows:

157.2(3) The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner of public safety for collection of breath samples for evidentiary purposes. The current list shall be available upon request to the Division of Criminal Investigation Criminalistics Laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or on the Web site of the department of public safety.

NOTE: ~~The current address for information on approved evidentiary breath testing equipment from the criminalistics laboratory is: http://www.dps.state.ia.us/DCI/Crime_Lab/Evidential_Breath_Testing/index.shtml.~~

ITEM 9. Amend subrule 157.2(4) as follows:

157.2(4) The operator of an evidentiary breath testing device shall have been certified as competent in the operation of the breath testing device, and shall proceed in accordance with the instructions included in an operating manual furnished by the division of criminal investigation criminalistics laboratory. An operating manual, with number and date, specific to a particular approved device and prepared by the division of criminal investigation criminalistics laboratory shall be available to operators using the device. The current version of the operating manual for each device currently approved for use in Iowa may be obtained by contacting the Division of Criminal Investigation Criminalistics Laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or from the department’s Web site.

NOTE: ~~The current location of operating manuals for approved evidentiary breath testing devices on the department’s Web site is: http://www.dps.state.ia.us/DCI/Crime_Lab/Evidential_Breath_Testing/index.shtml.~~

ITEM 10. Amend rule 661—157.7(321J) as follows:

661—157.7(321J) Detection of drugs other than alcohol.

157.7(1) Adoption of federal standards. Initial test requirements based upon standards adopted by the federal Substance Abuse and Health Services Administration in “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” 59 FR 29908, as amended in “Revisions to the Mandatory Guidelines,” 62 FR 51118 73 FR 71858, and displayed in the following table are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, acetylmorphine, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

Substance	Minimum Level (ng/ml) ¹
Marijuana metabolites	50
Cocaine metabolites	300 <u>150</u>
Opiate metabolites <u>codeine/morphine</u>	2000
<u>Acetylmorphine</u>	<u>10</u>
Phencyclidine	25
Amphetamines ² (<u>amphetamine, methamphetamine, and methylenedioxymethamphetamine</u>)	1000 <u>500</u>

NOTE:

¹ “ng/ml” means “nanograms per milliliter.”

² Either a single initial test kit or multiple initial test kits may be used provided that the single test kit detects each target analyte independently at the specified cutoff.

157.7(2) Reserved.